

REMARKS/ARGUMENTS

Applicant respectfully requests further examination and reconsideration in view of the instant response. The claims remaining in the present application are Claims 1-9. Claims 1-9 are rejected. Claim 3 is cancelled herein. No new matter has been added.

CLAIM REJECTIONS

112

Claim 3 is rejected under 35 U.S.C. 112, fourth paragraph, as failing to further limit Claim 2. Claim 3 has been cancelled herein, thus Applicants consider the rejection moot and respectfully request the rejection be removed.

102

Claim 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hillsman (5,582,182). The rejection is respectfully traversed for the following rationale.

Independent Claim 1 includes the feature of “the pressure control means being such that it controls the pressure in response to a breathing pattern of the person.” Hillsman fails to show this claimed feature.

With the present claimed invention, the pressure is modified based on the breathing pattern of the person. In this way, the pressure controller modifies the breathing load the patient is exposed to in response to the natural breathing pattern of the person. With the

present claimed invention, the pressure load to the patient is not constant, but is modified according to the breathing pattern.

MPEP §2131 provides:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

Applicants contend that Hillsman fails to teach each claimed feature of Independent Claim 1. In contrast to the claimed invention that “controls the pressure in response to a breathing pattern of the person,” Hillsman teaches imposing “a defined inspiratory resistive load under controlled breathing” (abstract). Additionally, with Hillsman, the pressure is increased “over time” and is not controlled “in response to a breathing pattern of the person,” as claimed. Applicants submit that the Examiner has not addressed this claimed feature nor does the rejection specify where in Hillsman this claimed feature is found.

With Hillsman, controlled breathing is desired (abstract) because the pressure load is based on time which teaches away from a pressure, “determined by a persons breathing pattern,” as with the present claimed invention. Hillsman fails to show the pressure modified by the breathing pattern, as claimed.

In summary, Applicants believe Hillsman fails to show each claimed feature as set forth in Independent Claim 1. As such, Applicants believe Independent Claim 1 is not anticipated by Hillsman. Additionally, dependent Claims 2 and 4-9 include additional features that are not anticipated by Hillsman. As such, Applicants believe Claims 1-2 and 4-9 are not anticipated by Hillsman and Applicants respectfully request the rejection be removed.

CONCLUSION

In light of the above remarks, Applicant respectfully requests reconsideration of the rejected claims.

Based on the arguments presented above, Applicant respectfully asserts that Claims 1-2 and 4-9 are in condition for allowance.

The Examiner is invited to contact Applicant's undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

WAGNER BLECHER LLP

Date: November 23, 2011

/John P. Wagner, Jr./
John P. Wagner, Jr.
Reg. No. 35,398
123 Westridge Drive
Watsonville, CA 95076 USA
(408) 377-0500